



FILED

6-15-16
04:53 PM

MP6/jt2/ar9 6/15/2016

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Natural Gas and Electric Safety
Citation Programs.

Rulemaking 14-05-013
(Filed May 15, 2014)

**ASSIGNED COMMISSIONER'S AMENDED SCOPING MEMO
AND RULING FOR PHASE II**

Summary

This ruling amends the October 1, 2015 Assigned Commissioner's Scoping Memo and Ruling for Phase II (Phase II Scoping Memo) by modifying the scope and schedule regarding the requirements on self-identified potential violations. Specifically, this Amended Phase II Scoping Memo requests that the parties comment on the June 1, 2016 report issued by the Commission's Safety and Enforcement Division (SED), which report is attached to this ruling. This report proposes further additional developed issues and SED recommendations on the broad category of self-identified potential violations. Parties may file opening comments on the attached report no later than July 15, 2016, and reply comments no later than August 5, 2016.

1. Background

On May 15, 2014, the Commission instituted this rulemaking to refine its gas safety citation program and to establish an electric safety citation program

that would, among other things, comply with the requirements contained in Senate Bill (SB) 291. SB 291 added § 1702.5 to the Public Utilities Code,¹ which requires the Commission to develop and implement safety enforcement programs for gas corporations and electrical corporations by July 1, 2014 and January 1, 2015, respectively.

Resolution ALJ-274 (issued December 7, 2011), which the Commission adopted before SB 291 was enacted, established a gas safety citation program for gas corporations that are in violation of the Commission's General Order 112-E² and/or the Code of Federal Regulations, Title 49, Parts 190, 191, 192, 193, and 199. In the Order Instituting Rulemaking (OIR) for this proceeding, the Commission determined that this existing program meets all of the requirements of § 1702.5(a) for a gas safety program. (OIR at 4-6.) Thus, the OIR determined that the first step of the proceeding was to implement an electric safety citation program in compliance with SB 291. On September 26, 2014, the Phase I scoping memo issued and outlined the scope and schedule for Phase I.

On December 8, 2014, the Commission concluded Phase I by issuing D.14-12-001, as modified by D.15-05-054 (Phase I Decision).³ The Phase I Decision adopted an electric safety citation program which satisfies the requirements of SB 291. The Phase I Decision also identified several issues for possible consideration in Phase II and stated that in subsequent phases of this

¹ All statutory references are to the California Public Utilities Code unless otherwise provided.

² In Decision (D.) 15-06-044, the Commission recently adopted revised General Order 112-F. If necessary, the gas and electric citation programs should be modified to reference the latest versions of the General Orders because utilities must comply with the latest version of them.

³ The full title of D.15-05-054 is "Order Modifying Decision (D.) 14-12-001, For Purpose of Clarification, And Denying Rehearing, As Modified." Page references in this Amended Phase II Scoping Memo to the "Phase I Decision" are to D.14-12-001.

proceeding, the Commission will develop and implement improvements and refinements to the electric and gas safety citation programs, as well as address other related issues relevant to a robust safety enforcement program. (Phase I Decision at 3.)

The Phase II Scoping Memo, among other things, requested the parties to comment on a set of detailed issues set forth. Several of those issues fell under the broad category of the “requirements for self-reporting of potential violations.” (See Section 2.2 of the Phase II Scoping Memo.)

2. Amended Scope of Phase II of the Proceeding

The brief history of the requirements on self-identified potential violations in this proceeding provides context to the request for further in depth process on additional developed issues on the broad category of self-identified potential violations. Resolution ALJ-274, Appendix A, I.F requires that gas corporations provide notification of violations to Staff and to local authorities within ten days of self-identification. The Phase I Decision at Appendix A, I.E requires electrical corporations to provide notification of violations to Staff within thirty days of self-identification, with a statement of when the violation will be corrected. In the Phase I Decision at 37-38, the Commission also stated that “Phase II, will also establish additional self-reporting requirements to the 30 day reporting requirement, which shall encompass reporting process and criteria.”

The Phase II Scoping Memo requested comment on the following issues regarding the broad category of requirements for self-reporting of potential violations:

1. How should the requirements for self-reporting of violations in Resolution ALJ-274 and the Phase I Decision be reconciled?⁴
2. What additional self-identified reporting requirements, including reporting processes and criteria, should be established? (*See* e.g. Phase I Decision at 18-19 and 37-38.)
3. Should the requirements adopted in Resolution ALJ-274 (gas) and D.14-12-001 (electric) that Staff shall consider whether a utility timely self-identifies potential violations where no injury or damage has resulted in deciding whether to cite such violations, and the amount of the penalty if a citation issues, be modified? If so, state the suggested modifications and the rationale for them.

In response to the Phase II Scoping Memo, many parties provided comments and replies on these issues. These comments are summarized in the attached SED report. However, based on these comments, there remains an insufficient record for the Commission to determine clarity on the detailed issues regarding self-identified potential violations. Therefore, SED has drafted a June 1, 2016 report entitled “Report of the Safety and Enforcement Division on Self-Identified Potential Violations,” which is attached hereto. This ruling amends the scope of this proceeding to encompass the additional developed issues on self-identified potential violations set forth in the SED report, and requests comment on that report.

⁴ The Phase I Decision at 18 states that the Commission does not intend to revisit the 30-day reporting requirement for self-identified violations. However, the two citation programs differ as to the number of days after self-identification that a utility must report such violations to the Commission. This ruling inquires from the parties their position on the limited question of whether these time frames should be uniform or not and why.

3. Reaffirmation of Category of Proceeding and Need for Hearing

As stated in the Phase I Scoping Memo, this OIR preliminarily categorized the proceeding as quasi-legislative and stated that hearings may be needed, as determined by the assigned Commissioner. This Amended Phase II Scoping Memo reiterates the determination as to category. Because the final category determination was made on September 26, 2014 in the Phase I Scoping Memo, that ruling on categorization is no longer appealable under Rule 7.6.

Presently, no workshops or evidentiary hearings are anticipated for Phase II. However, if a party believes that hearings are necessary on the self-identified potential violations issues addressed in this Amended Phase II Scoping Memo, the party shall in its opening comments filed pursuant to this Amended Phase II Scoping Memo (a) state the particular issue for which hearings are necessary; (b) set forth the rationale for this request; and (c) state any disputed issues of material fact for which a hearing would be necessary. Similarly, if a party believes workshops are necessary on the self-identified potential violations issues addressed in this Amended Phase II Scoping Memo, the party should in its opening comments filed pursuant to this Amended Phase II Scoping Memo, (a) set forth the particular issue for which workshops are necessary; and (b) state detailed rationale for a workshop request.

If there are any workshops in this proceeding, notices of such workshops will be posted on the Commission's Daily Calendar to inform the public that a decision-maker or an advisor may be present at those meetings or workshops. Parties shall check the Daily Calendar regularly for such notices.

4. Amended Schedule of Phase II

Parties should file opening comments on the attached June 1, 2016 SED Report entitled "Report of the Safety and Enforcement Division on Self-Identified

Potential Violations” no later than July 15, 2016, and reply comments no later than August 5, 2016.

If the Commission finds these opening and reply comments sufficient to address the issues concerning self-identified potential violations, I anticipate a proposed decision in Phase II would issue within 90 days of the filing of the reply (or subsequent) comments. If further process is necessary, the schedule will be modified at that time.

In any event, it is anticipated that Phase II will conclude no later than 18 months from the issuance of this Amended Scoping Memo, pursuant to § 1701.5.

5. Safety Considerations

As stated in the Phase I Scoping Memo, the primary purpose of this rulemaking is to further the implementation of the Commission’s gas and electric safety enforcement programs. Furthermore, delegating to Staff the authority to issue citations to gas and electric corporations for violations of safety regulations related to gas and electric supply facilities will permit the Commission to streamline enforcement procedures by assessing penalties for safety violations which previously required cumbersome proceedings before any enforcement could occur. Properly implemented, the citation programs will encourage gas and electric corporations to proactively identify and correct violations to avoid penalties and, where applicable, to self-identify potential violations.

6. Assignment of Proceeding

Pursuant to Rule 13.2 of the Commission’s Rules of Practice and Procedure (Rules), President Picker continues as the assigned Commissioner and Presiding Officer. Pursuant to Section 1701.4 and Rule 13.2, Administrative Law Judge

(ALJ) Dan H. Burcham continues as the assigned ALJ to this proceeding and will act as an assistant to the assigned Commissioner.

7. *Ex Parte* Communications

This is a quasi-legislative proceeding; therefore *ex parte* communications are allowed without restriction or reporting requirement pursuant to Rule 8.3(a).

8. Intervenor Compensation

The October 1, 2015 Phase II Scoping Memo required any intervenor who intends to seek intervenor compensation in Phase II to file its Notice of Intent to Claim Compensation (NOI) no later than 30 days after the issuance of the Phase II Scoping Memo. No NOIs have been filed.

Therefore, **IT IS RULED** that:

1. The scope and schedule are as set forth in the October 1, 2015 Phase II Scoping Memo, as amended by this Amended Phase II Scoping Memo, unless further amended by the assigned Commissioner or Administrative Law Judge. Parties shall file opening comments on the attached June 1, 2016 Report of the Safety and Enforcement Division on Self-Identified Potential Violations no later than July 15, 2016, and reply comments no later than August 5, 2016.
2. Because this ruling re-affirms the categorization of this proceeding as quasi-legislative (which categorization was made in the Phase I Scoping Memo dated September 26, 2014), the ruling on categorization is no longer appealable under Rule 7.6.
3. Phase II is not expected to require evidentiary hearings or workshops. If a party believes evidentiary hearings or workshops are necessary on the self-identified potential violations issues addressed in this Amended Phase II Scoping Memo, the party, in its opening comments filed pursuant to this Amended Phase II Scoping Memo shall (a) state the particular issue for which

hearings are necessary; (b) set forth the rationale for this request; and (c) state any disputed issues of material fact for which a hearing would be necessary. Similarly, if a party believes workshops are necessary on the self-identified potential violations issues addressed in this Amended Phase II Scoping Memo, the party shall in its opening comments filed pursuant to this Amended Phase II Scoping Memo (a) state the particular issue for which workshops are necessary; and (b) set forth detailed rationale for a workshop request.

4. This is a quasi-legislative proceeding; therefore ex parte communications are allowed without restriction or reporting requirement.

5. Pursuant to Pub. Util. Code § 1701.4 and Rule 13.2, President Michael Picker, continues as the assigned Commissioner, and is the Presiding Officer. Administrative Law Judge (ALJ) Dan H. Burcham continues as the ALJ in this proceeding and shall act as an assistant to the assigned Commissioner.

Dated June 15, 2016, at San Francisco, California.

/s/ MICHAEL PICKER

Michael Picker
Assigned Commissioner

ATTACHMENT A

**REPORT OF THE SAFETY AND ENFORCEMENT
DIVISION ON SELF-IDENTIFIED POTENTIAL
VIOLATIONS**

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Natural Gas and Electric
Safety Citation Programs.

Rulemaking 14-05-013
(Filed May 15, 2014)

**REPORT OF THE SAFETY AND ENFORCEMENT DIVISION ON
SELF-IDENTIFIED POTENTIAL VIOLATIONS**

June 1, 2016

Table of Contents

I.	SUMMARY	1
II.	BACKGROUND.....	2
III.	PARTIES' COMMENTS ON SELF-IDENTIFIED VIOLATIONS	4
	A. JOINT PARTIES	4
	B. CUE.....	5
	C. ORA	5
	D. PG&E	6
	E. SoCAL GAS AND SDG&E	6
	F. SOUTHWEST GAS	8
IV.	CURRENT REPORTING OF SELF-IDENTIFIED VIOLATIONS.....	9
	A. PG&E.....	9
	B. SoCALGAS AND SDG&E	9
	C. SOUTHWEST GAS	9
V.	REPORTING REQUIREMENTS THAT MAY INCLUDE POTENTIAL VIOLATIONS.....	10
	A. GAS CORPORATION REPORTING REQUIREMENTS	10
	1. Incident Reports as Required by GO 112-F Section 122.2(a).....	10
	2. Safety Related Condition Reports	11
	3. Quarterly Summary Reports Required by GO 112-F Section 122.2 (d)	12
	4. Data Submitted or Available During Inspections and Audits	12
	B. ELECTRICAL CORPORATION REPORTING REQUIREMENTS	12
	1. Notification of Major Outages	12
	2. Incident Reports	13
	3. Annual Reports.....	13
	4. Data Submitted or Available During Inspections and Audits	13
VI.	SED RECOMMENDATIONS REGARDING SELF-IDENTIFIED POTENTIAL VIOLATIONS.....	14
	A. WHETHER WORKSHOPS ARE NEEDED REGARDING SELF-IDENTIFIED POTENTIAL VIOLATIONS	14

B. MANDATORY VS. VOLUNTARY REPORTING OF SELF-IDENTIFIED POTENTIAL VIOLATIONS	15
1. Rationale for Making Reporting of Potential Violations Voluntary	16
2. Rationale for Making Reporting of Potential Violations Mandatory	18
C. CRITERIA FOR SELF-IDENTIFIED POTENTIAL VIOLATIONS TO BE REPORTED	19
1. Gas Corporations	21
2. Electrical Corporations	21
D. REPORTING PROCEDURES FOR SELF-IDENTIFIED POTENTIAL VIOLATIONS.....	22
1. Reporting Process	22
2. Correction of Self-identified Potential Violations.....	23
3. Reporting Period.....	23
4. Notification to City and County Officials	24
E. CONSIDERATION IN THE CITATION PROCESS OF UTILITY REPORTS OF SELF-IDENTIFIED POTENTIAL VIOLATIONS.....	25
F. OTHER RECOMMENDATIONS REGARDING SELF-IDENTIFIED POTENTIAL VIOLATIONS	26

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking
Regarding the Commission's Natural
Gas and Electric Safety Citation
Programs.

Rulemaking 14-05-013
(Filed May 15, 2014)

**REPORT OF THE SAFETY AND ENFORCEMENT DIVISION ON
SELF-IDENTIFIED POTENTIAL VIOLATIONS**

I. Summary

This report presents recommendations of the California Public Utilities Commission's (CPUC's or Commission's) Safety and Enforcement Division (SED) regarding utility reporting of self-identified potential violations and their consideration in the electric and gas citation programs. SED is currently authorized to issue citations and is advisory Staff in Rulemaking (R.) 14-05-013.

Decision (D.) 14-12-001, in adopting an electric citation program, provided that Phase II would establish the reporting process and criteria for violations that are self-identified and self-corrected by electrical corporations. Pending Phase II, electrical corporations were not required to report self-identified potential violations to SED.

Gas corporations have been reporting self-identified and self-corrected violations to SED, as required by Resolution ALJ-274. Each gas corporation has developed its own criteria for self-reports, as described in Section IV below.

Although D.14-12-001 and Resolution ALJ 274 both discuss the reporting of "self-identified violations," SED believes the terminology used in Senate Bill 291 (SB 291), codified in Public Utilities Code Section 1702.5, more accurately applies. Section 1702.5(a)(1) states, in part, that the "commission staff shall take into account voluntary reporting of *potential violations*." (emphasis added.) Because the determination of what

constitutes a violation is made only through a Commission process, SED believes the term “potential violation” is more appropriate.

SED considers a potential violation to be a condition that could potentially represent a violation(s) of Commission General Orders or other applicable decisions, codes or regulations for gas or electric facilities.

In this report, SED’s Electric Safety and Reliability Branch (ESRB) and Gas Safety and Reliability Branch (GSRB) provide recommendations and a consistent approach to reporting policies and procedures for self-identified possible violations to the extent practicable, as explained below.

II. Background

Senate Bill 291 (Hill, 2013) added Public Utilities (PU) Code Section (§) 1702.5, effective January 1, 2014. PU Code § 1702.5(a)(1) provides as follows:

When considering the issuance of citations and assessment of penalties, the commission staff shall take into account voluntary reporting of potential violations, voluntary removal or resolution efforts undertaken, and prior history of violations, the gravity of the violation, and the degree of culpability.

Resolution ALJ-274 (issued December 7, 2011), which the Commission adopted before SB 291 was enacted, established a gas safety citation program for gas corporations. Resolution ALJ-274 contains the following provision regarding self-identified and self-corrected violations:

F. Self-identified and self-corrected violations

1. To the extent that a gas corporation self-identifies and self-corrects violations and no injury or damage has occurred, Staff shall consider such facts in determining whether a citation should be issued. The gas corporation shall provide notification of such violations shall be provided (sic) to Commission Staff and to local authorities, as described above, within ten days of self-identification of the violation. (Resolution ALJ-274, Appendix A, I.F.1.)

Resolution ALJ-274 also requires that gas corporations provide notification of any self-identified and self-corrected violations to Commission Staff and to local authorities within ten calendar days of self-identification of the violation.

D.14-12-001 (Phase I Decision) adopted an electric citation program and contains the following provisions regarding self-identified and self-corrected violations:

E. Self-Identified and Self-Corrected Violations

Phase II of Rulemaking 14-05-013 will establish additional Self-Identified reporting requirements, which shall encompass reporting process and criteria. Those requirements shall be developed in Phase II pursuant to further direction by the Assigned Commissioner and ALJ. To the extent that an electrical corporation self-identifies and self-corrects violations, reports the violation to Commission Staff, and no injury or damage has occurred, Staff shall consider such facts, in addition to those factors set forth in California Public Utilities Code § 1702.5 (a)(1), § 2104.5, D. 98-12-075, and Resolution ALJ-277, in determining whether a citation should be issued and the amount of the penalty if a citation is issued. The electrical corporation shall provide notification of such violations to Commission Staff within 30 days of self-identification of the violation. The electrical corporation's notification of the self-identified violation shall also state when the violation will be corrected, consistent with the time period in GO 95. (D.14-12-001, Appendix A, Citation Procedures and Appeal Process, Section I.E.)

The Phase II scoping memo contains the following questions regarding self-reporting of potential violations:

7. How should the requirements for self-reporting of violations in Resolution ALJ-274 and the Phase I Decision be reconciled?
[Footnote 7: The Phase I Decision at 18 states that the Commission does not intend to revisit the 30 day reporting requirement for self-identified [electric] violations. However, the two citation programs differ as to the number of days after self-identification that a utility must report such violations to the Commission. This ruling inquires from the parties their position on the limited question of whether these time frames should be uniform or not and why.]

8. What additional self-identified reporting requirements, including reporting processes and criteria, should be established? (See e.g. Phase I Decision at 18-19 and 37-38.)
9. Should the requirements adopted in Resolution ALJ-274 (gas) and D.14-12-001 (electric) that Staff shall consider whether a utility timely self-identifies potential violations where no injury or damage has resulted in deciding whether to cite such violations, and the amount of the penalty if a citation issues, be modified? If so, state the suggested modifications and the rationale for them.

III. Parties' Comments on Self-identified Violations

The Phase II scoping memo allowed parties to file opening comments on the questions in the scoping memo no later than November 2, 2015 and reply comments no later than December 2, 2015. A summary of the comments regarding self-identified violations follows. (Not all parties addressed these issues in their comments.)

A. Joint Parties

PacifiCorp, Southern California Edison Company (Edison), Bear Valley Electric Service, and Liberty Utilities (CalPeco Electric) (collectively, Joint Parties) filed joint comments and reply comments.

The Joint Parties recommend that the time period to self-report a violation after discovery be harmonized so that both programs have the 30-day requirement. The Joint Parties state that the self-reporting language is vague and needs clarification, and that the expectation for self-reporting is not clear. The Joint Parties do not believe that the Commission wants to receive self-reports for every potential nonconformance with General Order (GO) 95 identified during regular inspection and maintenance programs. These parties also note there are several regulatory requirements for self-reporting, such as the utilities' annual GO 165 reports and incident reports. They state that categories of violations that are subject to the self-reporting requirements should be identified by a tiered, risk-based approach that focuses on conditions that have an immediate safety impact. The Joint Parties believe that self-reporting should be encouraged with avoided citations or eliminated/reduced penalties. These parties agree that Staff should have the

discretion whether to issue a citation or to eliminate or reduce penalty amounts in connection with self-reported violations, but urge the Commission to adopt guidelines that incorporate stakeholder input. According to these parties, Staff should follow such guidelines in exercising such discretion.

The Joint Parties recommend that all-party workshops be held to address, among other things, establishment of guidelines for the self-reporting requirements and the content of any self-report, and to assist Staff in determining the extent to which a self-report will affect a determination of whether to issue a citation and the amount of the associated penalty.

B. CUE

The Coalition of California Utility Employees (CUE) recommends that the Commission “develop a broader safety enforcement program for gas and electric corporations.” CUE states that the citation program must “incentivize self-reporting so that the utilities are more willing to come forward with violations.”

CUE recommends that the Commission examine other successful regulatory safety enforcement programs such as the Federal Aviation Administration (FAA), which uses anonymous “aggregate, protected data from industry and government voluntary reporting programs, to proactively find safety issues, identify safety enhancements and measure the effectiveness of solutions.” CUE recommends that the Commission consider using a neutral third party, like the FAA uses the National Aeronautics and Space Administration, to evaluate confidential safety reports.

C. ORA

The Office of Ratepayer Advocates (ORA) does not recommend any new self-reporting requirements in its opening comments, but reserves the right to reply to other proposals in its reply. In its reply comments, ORA states that no commenting party provides adequate justification for delaying self-reporting in gas cases, and the value of having the same timeframe across both programs is not outweighed by delaying the reporting for gas corporations.

D. PG&E

Pacific Gas and Electric Company (PG&E) believes the 30-day self-reporting period for the electric safety citation program, rather than the 10-day period for gas, is the more reasonable approach, as it allows the utilities time to consult with SED and to develop a thoughtful and thorough solution to the problem. PG&E believes the current self-reporting process for both programs is very unclear and inconsistent and it is difficult for the utilities to know what the Commission wants self-reported. For instance, PG&E states that, at the September 24, 2015 Safety En Banc, SED discussed the existing confusion around self-reporting and stated that gas utilities had very different approaches; some exclude violations found through internal Quality Assurance/Quality Control (QA/QC) procedures, and others report only violations that have an associated safety-related condition. PG&E states that electric utilities face similar uncertainties.

PG&E recommends workshops to develop clear and transparent criteria for what types of violations and under what circumstances the Commission wants utilities to self-report, to provide additional guidance on the type of matters the Commission wants to be self-reported, and on how to factor self-reporting into the issuance or amount of any potential citation. PG&E does not address self-reporting in its reply comments.

E. SoCal Gas and SDG&E

Southern California Gas Company and San Diego Gas & Electric Company (SoCalGas/SDG&E) recommend that for consistency, the gas and electric self-reporting timeframes be the same, and that the Commission adopt the electric 30-day period for both programs. SoCalGas/SDG&E state that the 10-day self-reporting period for gas is insufficient time for the utility to gather all the underlying facts and information necessary to carefully analyze the underlying violation and potential remedies. In reply comments, SoCalGas/SDG&E add that 10 calendar days might include only 6 business days, and that a 30-day self-reporting period would provide adequate investigation time and avoid the need for piecemeal submittals to Staff.

SoCalGas/SDG&E recommend that workshops be held to establish the process for reporting different types of self-identified compliance items. These utilities state this will allow for greater consistency between the gas and electric reporting processes, as well as between all utilities. In reply comments, they add that workshops would “enable parties to work with the Commission and with each other to reach informal consensus” on self-reporting of potential violations and other important topics.

SoCalGas/SDG&E recommend that the Commission focus on using this reporting process for high-risk items where a hazardous condition or incident occurs. Their view is that routine nonconformances should be reported to SED but not necessarily through a formal process that also requires reporting information to city and county officials. SoCalGas/SDG&E state the self-reporting requirements of both programs should be aligned with established reporting requirements to be effective but not overly burdensome. These parties give as an example various items already being reported through the Commission’s and the Pipeline and Hazardous Materials Safety Administration’s (PHMSA) incident reporting process, through the GO 165 reporting process and pre-audit reports.

SoCalGas/SDG&E also recommend that there be exceptions from the self-reporting requirement. They state that, if a violation falls under one of the following categories, it should not have to be self-reported: (1) the violation is on the utility’s auditable maintenance plan or pre-audit exception list, (2) the violation is on the utility’s GO 165 report, or (3) the violation is reported pursuant to an incident report.

SoCalGas/SDG&E recommend that Staff be required to take into account efforts by the utility to self-report potential violations and also instances when there is no harm resulting from a violation or nonconformance, in deciding whether to cite such violations and in determining the amount of the penalty. According to these utilities, this will provide an incentive to utilities to report and for the utilities and Staff to work together to develop “lessons learned” and best practices. SoCalGas/SDG&E assert that, if utilities face penalties when self-reporting violations without regard to their efforts to be

forthcoming about identified nonconformances, employees will be discouraged from self-reporting.

In reply comments, SoCalGas/SDG&E agree with Southwest Gas' recommendation that there should be a two-year statute of limitations on issuing a citation based on a self-reported violation.

F. Southwest Gas

Southwest Gas recommends that the self-reporting notification requirements for both programs be 30 days, thus increasing the reporting period for gas utilities from 10 days to 30 days.

Southwest Gas states there should be two layers of self-reporting: safety-related and non-safety-related violations. A safety-related gas violation would be defined as a non-compliance with GO 112-E (currently GO 112-F) and/or Title 49 Code of Federal Regulations (CFR) Parts 190, 191, 192, 193, and 199 which results in an injury to people or property damage in excess of \$50,000. These violations would have a 30-day reporting requirement. Non-safety-related violations would be reported in advance of the next subsequent SED audit of the location (inspection unit) where the non-safety-related violation occurred and would be disclosed in writing to SED on a pre-audit exceptions list.

Southwest Gas also asserts that factors such as self-identification and events where no injury or damage result should be considered when determining to issue a citation or the amount of the penalty if a citation is issued.

Southwest Gas recommends that there be a statute of limitations on issuing a citation based on a self-reported violation, and that no citation should be issued more than two years after a violation is self-reported. The utility asserts this is fair because witnesses leave the company and memories fade, and the statute of limitations would provide closure and finality.

IV. Current Reporting of Self-identified Violations

D.14-12-001, in adopting an electric citation program, provided that Phase II would establish the reporting process and criteria for violations that are self-identified and self-corrected by electrical corporations. Pending Phase II, electrical corporations were not required to report self-identified violations to SED.

Gas corporations have been reporting self-identified violations to SED and self-correcting them, as required by Resolution ALJ-274. As of January 2016, 121 self-identified violations have been reported to GSRB, and citations in the amount of \$25.2 million were issued for nine self-identified violations.

Each gas corporation has developed its own criteria for self-reporting, as described below.

A. PG&E

PG&E currently self-reports all probable violations of GO 112-F, Reference Title 49 CFR Parts 190, 191, 192, 193, and 199 and violations of its own procedures, excluding the following:

1. Internal audit findings that are submitted during regular audits/inspections by GSRB,
2. QA/QC issues that are corrected promptly, and
3. Violations that are covered in an on-going proceeding, e.g., an Order Instituting Investigation (OII) proceeding.

B. SoCalGas and SDG&E

SoCalGas and SDG&E currently self-report only instances that meet the criteria of Safety Related Conditions as per Title 49 CFR, Part 191, Section 191.23.

SoCalGas and SDG&E originally submitted exception reports (internal-audit findings) during GSRB regular audits of each inspection unit. SoCalGas and SDG&E now submit the exception reports, covering the entire system, on a quarterly basis.

C. Southwest Gas

Southwest Gas currently reports only instances that meet the criteria of Safety Related Conditions as per Title 49 CFR, Part 191, Section 191.23.

V. Reporting Requirements that may Include Potential Violations

As parties have recognized in their comments, a number of reporting requirements already exist that may result in potential violations being brought to the attention of the Commission. Incidents or conditions that SED becomes aware of through the requirements listed below may or may not result in a finding of a violation. However, SED (or the Commission) may make such a determination after performing an investigation.

A. Gas Corporation Reporting Requirements

Current reporting requirements and practices for gas corporations are summarized below.

1. Incident Reports as Required by GO 112-F Section 122.2(a)

Gas corporations are required to report to the Commission within two hours during normal working hours all incidents that meet the following criteria:

1. Incidents which require U.S. Department of Transportation (DOT) notification:
 - i. An event that involves a release of gas from a pipeline, or of LNG, liquefied petroleum gas (LPG), refrigerant gas, or gas from an LNG facility, and that results in one or more of the following consequences:
 - A death, or personal injury necessitating in patient hospitalization; or
 - Estimated property damage of \$50,000 or more, including loss to the utility and others, or both, but excluding cost of gas lost; or
 - Unintentional estimated gas loss of three million cubic feet or more.
 - ii. An event that results in an emergency shutdown of an LNG facility. Activation of an emergency shutdown system for reasons other than an actual emergency does not constitute an incident.
 - iii. An event that is significant in the judgment of the utility, even though it did not meet the criteria of GO 112-F Sections 122.2(a)(1)(i) or (ii).
2. Incidents which either have attracted public attention or have been given significant news media coverage, that are suspected to involve natural gas and/or propane (LPG) gas, which occur in the vicinity of the utility's facilities; regardless of whether or not the utility's facilities are involved.

3. Incidents where the failure of a pressure relieving and limiting stations, or any other unplanned event, results in pipeline system pressure exceeding its established Maximum Allowable Operating Pressure plus the allowable build up set forth in 49 CFR § 192.201.
4. Incidents in which an under-pressure condition, caused by the failure of any pressure controlling device, or any other unplanned event other than excavation-related damage, results in any part of the gas pipeline system losing service or being shut-down.

2. Safety Related Condition Reports

Gas safety-related conditions must be reported within 10 working days as required by GO 112-F Section 124 or 49 CFR Part 191, Sections 191.23 and 191.25. This includes any of the following conditions involving facilities in service:

1. In the case of a pipeline (other than a liquefied natural gas (LNG) facility) that operates at a hoop stress of 20 percent or more of its specified minimum yield strength, general corrosion that has reduced the wall thickness to less than that required for the Maximum Allowable Operating Pressure, and localized corrosion pitting to a degree where leakage might result.
2. Unintended movement or abnormal loading by environmental causes, such as an earthquake, landslide, or flood, that impairs the serviceability of a pipeline or the structural integrity or reliability of an LNG facility that contains, controls, or processes gas or LNG.
3. Any crack or other material defect that impairs the structural integrity or reliability of an LNG facility that contains, controls, or processes gas or LNG.
4. Any material defect or physical damage that impairs the serviceability of a pipeline that operates at a hoop stress of 20 percent or more of its specified minimum yield strength.
5. Any malfunction or operating error that causes the pressure of a pipeline or LNG facility that contains or processes gas or LNG to rise above its Maximum Allowable Operating Pressure (or working pressure for LNG facilities) plus the build-up allowed for operation of pressure limiting or control devices.
6. A leak in a pipeline or LNG facility that contains or processes gas or LNG that constitutes an emergency.
7. Inner tank leakage, ineffective insulation, or frost heave that impairs the structural integrity of an LNG storage tank.
8. Any safety-related condition that could lead to an imminent hazard and causes (either directly or indirectly by remedial action of the operator), for purposes other than abandonment, a 20 percent or more reduction in operating pressure

or shutdown of operation of a pipeline or an LNG facility that contains or processes gas or LNG.

3. Quarterly Summary Reports Required by GO 112-F Section 122.2 (d)

This quarterly report includes a summary of all Commission reportable and non-reportable gas incidents as follows:

1. Incidents that were reported through the Commission's Emergency Reporting website.
2. Incidents for which either a DOT Form PHMSA F7100.1 or DOT Form PHMSA F7100.2 was submitted.
3. Incidents which involved escaping gas from the utility's facilities and property damage including loss of gas in excess of \$1,000.
4. Incidents which included property damage between \$0 and \$1,000, and involved fire, explosion, or excavation related damage.
5. Incidents where the failure of a pressure relieving and limiting stations, or any other unplanned event, results in pipeline system pressure exceeding its established Maximum Allowable Operating Pressure plus the allowable build up set forth in 49 CFR § 192.201.
6. Incidents in which an under-pressure condition, caused by the failure of any pressure controlling device, or any other unplanned event other than excavation-related damage, results in any part of the gas pipeline system losing service or being shut-down.

4. Data Submitted or Available During Inspections and Audits

Although there is no Commission-mandated requirement to do so, the large gas corporations (PG&E, SoCalGas, SDG&E, and Southwest Gas) provide notification of GO 112-F violations via Internal Finding Reports (a.k.a. Exception Reports) during regular inspections and audits.

B. Electrical Corporation Reporting Requirements

Current reporting requirements for electrical corporations are summarized below.

1. Notification of Major Outages

Electrical corporations must notify the Commission and other entities within one hour of a major outage, as required by GO 166, Standard 6.

2. Incident Reports

Electric utilities must report to the Commission, within two hours during normal working hours, incidents that meet the following criteria:¹

1. Result in fatality or personal injury rising to the level of in-patient hospitalization and attributable or allegedly attributable to utility owned facilities; or
2. Involve damage to property of the utility or others estimated to exceed \$50,000; or
3. Are the subject of significant public attention or media coverage and are attributable or allegedly attributable to utility facilities.

3. Annual Reports

Electrical corporations must submit annual reports including the following:

1. All missed or late substation inspections in annual reports required by GO 174.
2. Emergency plans in annual reports required by GO 166.
3. Annual outage and reliability statistics in annual reports required, most recently, by D.16-01-008.

Additionally, large electrical corporations must report all missed overhead and underground inspections in an annual report required by GO 165.

4. Data Submitted or Available During Inspections and Audits

The electric utilities maintain large databases which list all system non-conformances which include GO 95, GO 128, GO 165, and GO 174 violations on their distribution, transmission and substation facilities that they are aware of through their own inspections, customer complaints and trouble reports. In addition to violations of Commission rules and GOs, the databases also may include violations of the utility's own standards or procedures. The number of violations contained in these databases runs into the hundreds of thousands, likely millions, because they include everything, including

¹ D.06-04-055, Appendix B, as amended by Resolution E-4184.

many conditions that may not be violations of the Commission rules and GOs, but may be non-compliances with the utilities' own requirements or the requirements of other public agencies.

Although these violations are not reported through Commission-mandated requirements, ESRB reviews them during audits and incident investigations.

VI. SED Recommendations Regarding Self-identified Potential Violations

After careful review of the filed comments and based on experience to date with the gas and electric citation programs, SED has the following recommendations regarding self-identified potential violations.

As explained in Section VI.C below, ESRB and GSRB do not recommend that the reporting procedures for self-identified potential violations apply to every potential violation not otherwise reported. Instead, we recommend that the procedures apply to potential violations that pose imminent danger to the public, and to unsafe conditions that might be difficult, if not impossible, to discover during routine audits and investigations (e.g., forging inspection records, faking signatures on maintenance records, using wrong numbers in design, etc...). Under these procedures, SED may be made aware of high risk potential violations that fail to meet other reporting criteria. Neither ESRB nor GSRB sees value in reporting every self-identified potential violation within 30 days.

A. Whether Workshops are Needed Regarding Self-identified Potential Violations

All of the utilities recommend workshops to address, among other things, criteria for self-identified potential violations, the reporting process, and how Staff should factor reporting of self-identified potential violations into its determinations of whether to issue a citation and, if so, the amount of the associated penalties. Some parties also believe that workshops could allow all parties to reach consensus.

SED does not see a need for workshops for several reasons. Workshops can be helpful when there are significant differences of opinion or different levels of knowledge among parties regarding factual issues. Workshops also may be valuable when discussion

among the parties can help the parties find common ground and reach consensus or compromise on relevant issues. However, workshops often lead to acrimony and dissension with limited usefulness.

In this report, SED recommends procedures for reporting of self-identified potential violations, and does not believe that workshops would lead to any further specificity. Submission of written comments on SED's recommendations should provide sufficient development of the record on these issues.

Some parties suggest that the Commission should investigate other self-reporting regimes. SED has investigated several other such regimes, and many of these (for example the North American Electric Regulatory Corporation (NERC) procedures) accept or require self-reporting of all violations. These are much broader reporting provisions than SED recommends in this proceeding, and their consideration through workshops would not be helpful.

Other issues, such as the self-reporting timeline, statute of limitations, and notifications to other jurisdictions, can be considered adequately through written comments because of their limited scope or clear guidance in D.14-12-001 or existing statutes.

Regarding how Staff should consider reporting of self-identified potential violations in deciding whether to issue a citation or in determining the amount of a citation, SED believes this should be within the discretion of Staff, subject to existing statutes or Commission decisions or practices. This is not a matter to be determined by the regulated parties, and we see no benefit to having it discussed in workshops.

B. Mandatory vs. Voluntary Reporting of Self-identified Potential Violations

The Commission needs to specify whether reporting of self-identified potential violations will be mandatory or voluntary. This issue was not directly addressed in opening and reply comments, and the limited allusions to this issue by parties were ambiguous in most cases.

Resolution ALJ-274 states (Finding and Conclusion 20), “It is reasonable to *require* the gas corporations to provide notice of any self-identified and self-corrected violations...to Commission Staff...within ten calendar days of self-identification.” (emphasis added). SB 291, codified in PU Code Section 1702.5(a)(1), states, “the commission staff shall take into account *voluntary* reporting of potential violations...” (emphasis added). Finally, D.14-12-001 states:

E. Self-Identified and Self-Corrected Violations

Phase II of Rulemaking 14-05-013 will establish additional Self-Identified reporting *requirements*, which shall encompass reporting process and criteria. (emphasis added.)

While SED has considered the reporting of self-identified violations pursuant to Resolution ALJ-274 to be mandatory, the Commission should specify in Phase II the nature of the reporting provisions going forward, for both the gas and electric citation programs.

SED does not make recommendations as to whether reporting of self-identified potential violations should be mandatory or voluntary, but summarizes below some of the arguments for and against each approach.

1. Rationale for Making Reporting of Potential Violations Voluntary

Several regulatory agencies, including the Federal Energy Regulatory Commission (FERC) and the Federal Aviation Administration (FAA), allow regulated entities to submit voluntary reports of possible violations. The agency may then consider the voluntary reports in determining whether to assess a civil penalty and, if so, the amount of the penalty. A commonly-described objective of such voluntary reporting programs is that offering regulated entities an incentive of reduced or waived penalties if they voluntarily identify, correct, and report possible regulatory violations will induce those entities to be more proactive in their audit and inspection regimes, and will improve their compliance with the agency’s regulations.

FERC has stated that it “will maintain our practice of awarding penalty credit for parties that promptly self-report violations, assuming such conduct is not negated by a poor compliance culture.”² A study by NERC³ found that in 2012 approximately ninety percent of the violations of its regulations for critical infrastructure were self-identified and reported to NERC through its voluntary reporting procedures.⁴ The FAA has described the reasoning behind its voluntary disclosure reporting program as follows:

Civil penalties, under the FAA’s enforcement program, have always been considered a means to promote compliance with the FAA’s regulations, not an end in themselves. In addition to the deterrence achieved by the appropriate use of civil penalties, the public interest is also served by positive incentives to promote and achieve compliance. Indeed, the FAA believes that aviation safety is well served by incentives for certificate holders... to identify and correct their own instances of noncompliance and to invest more resources in efforts to preclude their recurrence. The FAA’s policy of forgoing civil penalty actions when one of these entities detects violations, promptly discloses the violations to the FAA, and takes prompt corrective action to ensure that the same or similar violations do not recur is designed to encourage compliance with the FAA’s regulations, foster safe operating practices, and promote the development of Internal Evaluation Programs (IEPs).⁵

By its language, SB 291 arguably has the intent that the reporting of self-identified potential violations should be voluntary. The Commission appears to have expressed this view of SB 291 in the Order instituting R.14-05-013 and in D.14-12-001.⁶

SB 291 directs that voluntary utility reporting of potential violations will be taken into account in considering citations and penalties. However, if reporting of self-

² Federal Energy Regulatory Commission, *Revised Policy Statement on Enforcement*, Docket No. PL08-3-000, May 15, 2008, para. 62.

³ NERC is a not-for-profit regulatory authority subject to oversight by FERC and other governmental authorities.

⁴ NERC, *Balancing Authority Compliance Analysis Report*, 2013, p 16.

⁵ U.S. Department of Transportation, Federal Aviation Administration, *Advisory Circular No. 00-58B*, Section 5, April 29, 2009.

⁶ Order instituting R14-05-013, pp. 7-8; D.14-12-001, pp. 8-9 and 16.

identified potential violations is mandatory, such reports might not properly be considered a mitigating factor.

Finally, it appears from opening comments that PacifiCorp and PG&E, at least, assume the self-reporting will be voluntary.⁷

2. Rationale for Making Reporting of Potential Violations Mandatory

With respect to the alternate view that the Commission should mandate that electric and gas corporations report self-identified potential violations, instead of leaving it to the discretion of an electrical or gas corporation, mandatory reporting would help ensure that SED is aware of all self-identified potential violations which involve serious safety and reliability conditions.

In the spirit of SB 291, with mandatory reporting it would still be possible for SED to weigh the voluntary nature element as the level and usefulness of supporting detail provided with the required reporting of the possible violation. SED would assess whether or not the information exceeded the minimum reporting threshold and was helpful in allowing SED to fully understand how the violation occurred and whether the corrective action employed to prevent recurrence is sufficient. In this regard, Staff could consider the quality of voluntary supporting detail as a potential mitigating factor in determining a penalty amount, along with other factors consistent with PU Code Section 2104.5 which allows the Commission to consider "...the good faith of the person charged in attempting to achieve compliance."

In addition, mandatory reporting could be in the best interest of safety because it could motivate electric and gas corporations to be more vigilant in preventing violations (i.e., the fewer violations they commit, the fewer they would have to report). The utilities

⁷ PacifiCorp opening comments, p. 11; PG&E opening comments, p. 11.

also would be required to remediate or devise a corrective action plan as part of the reporting process.

Finally, at least for gas corporations, reporting is already mandatory per Resolution ALJ-274. The defined and limited reporting criteria recommended in this report represent an improvement over the current reporting system for gas corporations, and should be easier for gas corporations to comply with.

SED notes that if the Commission decides that reporting of self-identified potential violations is mandatory, not only may a utility's failure to self-report be considered as an aggravating factor in citation penalty assessments, but the failure to self-report may become a separate violation in itself subject to additional citations. This should be considered in determining whether self-reporting should be mandatory or voluntary.

C. Criteria for Self-identified Potential Violations to be Reported

As described in Section V above and as noted by several parties in their comments, there are a number of existing requirements for the electric and gas utilities to report events and activities that might be violations.

SoCalGas/SDG&E recommend that the self-reporting requirements be aligned with established reporting requirements (citing the Commission's and PHMSA's incident report process, the GO 165 reporting process, and pre-audit reports), "to be effective but not overly burdensome."

SoCalGas/SDG&E believe that the reporting process should focus on high-risk items where a hazardous condition or incident occurs, and that "routine nonconformances" should be reported to SED but not necessarily through "a formal process that also requires reporting information to city and county officials." They assert that a violation should not have to be self-reported if it is on the utility's auditable maintenance plan or pre-audit exception list, in the utility's GO 165 report, or reported pursuant to an incident report.

The Joint Parties recommend that categories of violations that are subject to the self-reporting requirements be identified by a tiered, risk-based approach.

Southwest Gas recommends that there be two layers of self-reporting: safety-related and non-safety-related violations. In its view, a non-compliance with GO 112 or 49 CFR Parts 190, 192, 193, and 19 which results in an injury to people or property damage in excess of \$50,000 should have a 30-day reporting requirement, with non-safety-related violations disclosed to SED only on a pre-audit exceptions list.

In general SED agrees with party comments on what should be considered a self-identified potential violation. SED does not see value in reporting of potential violations already reported on a timely basis under other requirements. SED wants to limit the reporting to potential violations related to conditions that pose imminent danger to the public, risks to large portions of the gas or electrical system, or unsafe conditions that are difficult, if not impossible, to discover on a timely basis during routine audits and investigations (i.e., forging inspection records, faking signatures on maintenance records, using wrong numbers in design, etc.). ESRB and GSRB recommend reporting criteria which we believe focus on potential violations with possible repercussions to safety and system reliability.

SED agrees with the Joint Parties that it would not be useful for the Commission to receive and review reports for every self-identified potential non-conformance with general orders identified during regular inspection and maintenance programs. SED has access to such information, reviews the documentation during audits, and can request access the information at any time, e.g., as part of audits and incident investigations.

SED recommends the following criteria for reporting of self-identified potential violations. While the recommended criteria for gas corporations and for electrical corporations are similar in concept, their details differ because of the differing characteristics of the respective systems.

1. Gas Corporations

SED recommends that the citation program provide for the reporting by gas corporations of only self-identified potential violations that meet any of the following four criteria, were not already reported via other means (i.e., an Incident Report, Safety Related Condition Report, or Quarterly Summary Report), and had not come to SED's attention based on audits or data requests. For instance if a reportable incident occurs and is reported to SED, the gas corporation should not later report any related self-identified potential violations because SED will conduct an investigation and make that determination. The four recommended criteria are as follow:

1. GO 112-F violations that pose a significant safety threat to the public and/or utility staff, contractors, or subcontractors.
2. GO 112-F violations that caused a system wide impact or affected a large geographic region.
3. GO 112-F violations that resulted in pipeline failure or damage.
4. Any instances of fraud, sabotage, falsification of records and/or any other instances of deception by a gas corporation's personnel, contractors, or subcontractors, regardless of the outcome.

2. Electrical Corporations

SED recommends that the citation program provide for the reporting by electrical corporations of only self-identified potential violations that meet any of the following four criteria, were not already reported via other means (e.g., an Incident Report or General Order 165, 166, or 174 Reports), and had not come to SED's attention based on audits or data requests. For instance if a reportable incident occurs and is reported to SED, the electrical corporation should not later report any self-identified potential violations related to that incident. The four recommended criteria are as follow:

1. The potential violation created a condition that posed a significant, immediate safety threat to the public and/or utility staff, contractors or sub-contractors.⁸

⁸ The intention of this criterion is to include any self-identified potential violation that presents such an

2. The potential violation caused or could have caused system-wide impacts to the electric grid, caused or could have caused unplanned power outages of over one hour to over 5 percent of an electrical corporation's customers or unplanned power outages of over 24 hours to over 100 electrical corporation customers, or caused or could have caused the electrical corporation to activate its emergency response program.
3. A potential violation that clearly could have directly caused damage to property of the utility or others estimated to exceed \$50,000.²
4. An instance of fraud, sabotage, falsification of records and/or any other instances of deception by an electrical corporation's personnel, contractors or subcontractors, regardless of the outcome.

These self-identification and reporting provisions should in no way change or affect any existing reporting requirements. Each utility should continue to make records of all potential violations available for review by SED staff during regular audits or at any time upon the request of SED.

Additionally, self-identification and reporting of any potential violation or safety-related condition in no way should relieve a utility of its existing responsibilities to correct such violations and safety-related conditions.

D. Reporting Procedures for Self-identified Potential Violations

1. Reporting Process

Under GSRB's current process, gas corporations submit reports of self-identified violations to a shared email inbox at the Commission.¹⁰ In the report, the gas corporation explains the violation, when it occurred (if known), and when and how the

obvious, immediate, and significant threat to life or limb of the public or utility workers that industry best practice dictates that any responsible utility would correct the condition immediately or as soon as possible.

² Electrical incidents that actually caused damage over \$50,000 are already reportable under Incident Reporting Requirements.

¹⁰ ALJ274SelfReports@cpuc.ca.gov

gas corporation identified the violation; it also describes any planned or completed corrective actions.

In the future SED may develop a web-based methodology or other refinements to the process for reporting of gas and electric self-identified potential violations. However, at this time the current GSRB methodology and practice is adequate for ESRB. We do not believe that Commission guidance is needed in this respect.

2. Correction of Self-identified Potential Violations

SED recommends that reports of self-identified potential violations be required to include information about whether the potential violation has been corrected. If a potential violation has not been corrected before the report is submitted, the report should include a plan and schedule for correction. Reporting self-identified potential violations does not relieve the utility of its obligation to correct violations with any immediate safety hazard as soon as feasible.

3. Reporting Period

PG&E supports a 30-day self-reporting period for both electric and gas utilities, on the basis that the longer period would allow the utilities time to consult with SED and to develop a thoughtful and thorough solution to the problem. SoCalGas/SDG&E state that the current 10-day self-reporting period for gas is insufficient time for the utility to gather all the underlying facts and information necessary to analyze carefully the underlying violation and potential remedies, pointing out that a ten-calendar-day requirement might only be six business days, depending on when a violation was first identified. They add that a 30-day period would allow adequate time to conduct necessary investigations and avoid the need to piecemeal submittals to Staff.

Joint Parties recommend that the time period to self-report a violation after discovery be 30 days for both electric and gas utilities. Southwest Gas recommends a 30-day reporting requirement for what it terms safety-related violations, with non-safety-related violations disclosed to SED only on a pre-audit exceptions list.

ORA opposes increasing the current 10-day reporting period for gas utilities, although it does not contest the 30-day period for electric utilities.

The utilities suggest harmonizing the reporting time requirement for both gas and electric utilities, and argue that the current 10-day self-reporting period for gas is an insufficient amount of time for the utility to gather all the underlying facts and information necessary to carefully analyze the underlying violation and potential remedies and consult with SED to develop a thoughtful and thorough solution to the problem. As the report of self-identified violations should include a corrective action plan, SED agrees with this argument. SED agrees with the utilities' recommendation that both gas and electric utilities be given 30 days to report self-identified potential violations.

However, although SED is agreeable to a 30-day reporting period, SED encourages the electric and gas utilities to consult with SED Staff regarding a potential violation as soon as possible, even if it is only an initial cursory report with a subsequent official submission. SED emphasizes that a 30-day reporting period in no way relieves the utilities of their duty to implement corrective actions, and make their facilities safe as quickly as possible.

4. Notification to City and County Officials

Resolution ALJ-274 requires that gas corporations notify local authorities, including “the Chief Administrative Officer or similar authority in the city and county where a citation is issued” within 10 days of self-identifying a violation.¹¹ The electric citation program adopted in D.14-12-001 does not contain a similar requirement for self-identified electric violations.

SoCalGas/SDG&E, PG&E, and Southwest Gas recommend deleting the requirement in the gas citation program that they notify city and county officials of each

¹¹ Resolution ALJ-274, Appendix A, Section I.E, which is referenced by Section I.F of Appendix A.

self-identified violation, because they feel the requirement may undermine on-going efforts to improve the effectiveness of outreach to first responders. They assert that, by requiring over-reporting of information that is not particularly useful or of interest to local jurisdictions, the Commission runs the risk of those jurisdictions “tuning out” and ignoring future correspondences that may be of greater interest and importance.

Because SED recommends that the reporting procedures for self-identified potential violations encompass only the most serious potential violations, the quantity of reports should be reduced from the current levels for gas corporations. Further, it is in the public interest for local authorities to be made aware of high-risk potential violations, so that they may coordinate with the utilities to prepare for potential emergencies if necessary. In light of the serious nature of the potential violations that would be reported, SED recommends continuation of the requirement in Resolution ALJ-274 that gas corporations notify city and county officials, and extension of this requirement to electrical corporations.

E. Consideration in the Citation Process of Utility Reports of Self-identified Potential Violations

The Joint Parties recommend that self-reporting be encouraged with avoided citations or eliminated/reduced penalties. They ask the Commission to adopt guidelines for Staff to follow in deciding whether to issue a citation or to eliminate or reduce penalty amounts in connection with self-reported violations.

SoCalGas/SDG&E recommend that Staff be required to take into account efforts by the utility to self-report potential violations and also instances when there is no harm resulting from a violation or nonconformance, in deciding whether to cite such violations and in determining the amount of the penalty. They assert that this will provide an incentive to utilities to report and for the utilities and Staff to work together to develop “lessons learned” and best practices and that, “if utilities face penalties when self-reporting violations without regard to their efforts to be forthcoming about identified nonconformances, employees will be discouraged from self-reporting.”

Southwest Gas recommends that factors such as self-identification and events where no injury or damage result should be considered when determining to issue a citation or the amount of the penalty if a citation is issued.

SED recommends that, because the circumstances might vary widely from instance to instance, SED should retain the flexibility to determine on a case-by-case basis how to assess the importance and weight to be given to the fact that the utility has self-identified and reported a potential violation. While self-identification and reporting of a potential violation may appropriately be considered as a mitigating factor in specific instances, a utility should not be shielded from a citation and penalty by such an action. Self-identified and reported potential violations (provided SED subsequently determines these to be actual violations) should remain subject to citations and monetary fines, at the discretion of SED management, based on consideration of the totality of circumstances related to the violation.

SED recommends that the Phase II decision affirm that, for both gas and electric violations, Staff shall consider whether a utility has timely self-identified, reported, and corrected the violations in deciding whether to issue a citation and, if so, in determining the penalty amount. If a utility believes that a citation has been issued inappropriately, or that an assessed fine is disproportionate to the violation, it would have the option of appealing the citation to the Commission.

F. Other Recommendations Regarding Self-identified Potential Violations

Southwest Gas recommends that there be a two-year statute of limitations on issuing a citation based on a self-reported violation, on the basis that this would be fair because witnesses leave the company and memories fade, and the statute of limitations would provide closure finality. SoCalGas/SDG&E agree with this recommendation. SED disagrees with imposing any time limitations on issuing a citation based on a self-identified potential violation. In Section 6.1 of D.14-12-001, the Commission decided

against any statute of limitations for citations in general. SED sees no reason the policy for self-identified potential violations should be different.

CUE recommends that the Commission consider having self-identified potential violations submitted to a neutral third party for independent evaluation. SED disagrees with this recommendation. Authority and responsibility for issuing citations for violations of Commission regulations, and setting penalty amounts, rests with Commission Staff alone. SED must not delegate this authority in any manner. Additionally, submission to a third party would present difficult confidentiality problems as some information submitted by utilities to the Commission may be submitted under confidentiality restrictions. CUE has failed to provide a convincing rationale why its recommendation should be considered.

CUE recommends examining reporting programs of other entities. SED has investigated the self-identification and reporting programs of several entities, including FERC, NERC, and FAA, and believes that SED's recommendations contained in this report represent the best policies for reporting of self-identified potential violations by electrical and gas corporations and for SED's consideration of such reports in the citation process.